



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 8, 1995

Mr. Richard J. Ybarra
Assistant Attorney General
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR95-1204

Dear Mr. Ybarra:

Your predecessor asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 29582.

The Office of the Attorney General (the "OAG") received an open records request for all records it holds regarding Primarily Primates, Inc. You have submitted to this office as responsive to this request various correspondence received by the OAG as well as internal memoranda regarding this corporation. You contend that these records may be withheld from the public pursuant to sections 552.103(a), 552.107, and 552.111 of the Government Code, and the informer's privilege incorporated by section 552.101 of the Government Code.

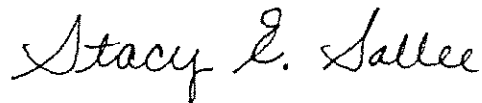
To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance the requested records show on their face that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The OAG may therefore withhold these records pursuant to section 552.103(a).

In reaching this conclusion, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to

that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Ref.: ID# 29582

Enclosures: Submitted documents

cc: Mr. Stephen Rene Tello
Corporate Secretary
Primarily Primates, Inc.
26099 Dull Knife Trail
San Antonio, Texas 78255-3420
(w/o enclosures)

¹As to documents that the opposing party has seen or had access to, neither section 552.107 nor section 552.111 excepts those documents from disclosure. Sections 552.107(1) and 552.111 are waived by the release of information to the public. Open Records Decision No. 630 (1994) (section 552.107(1)), Open Records Decision No. 435 (1986) (section 552.111). We also conclude that the informer's privilege under section 552.101 of the Government Code was waived by the OAG, as it was not claimed within ten days of the OAG's receipt of the request for information. Gov't Code § 552.301; see Open Records Decision No. 549 (1990) (informer's privilege waivable by governmental body). Therefore, the OAG may not withhold these documents under any of these exceptions.

Ms. Jan Soifer
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(w/o enclosures)